

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSEPH VISCOMI and FIRST DESTINY
REAL ESTATE, INC.,

Plaintiffs,

AFFIDAVIT IN SUPPORT
OF MOTION TO WITHDRAW
AS COUNSEL

Civil Action No.:
08-CV-327, NPM/GJD

VS.

EXCELSIOR INSURANCE COMPANY,

Defendant.

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

CHARLES L. FALGIATANO, ESQ., being duly sworn, deposes and

says:

1. I am an attorney licensed to practice law in New York State and a partner in the DeFrancisco & Falgiatano Law Firm, attorneys for Plaintiffs, Joseph Viscomi and First Destiny Real Estate, Inc. in the above-captioned matter.

2. I represented Plaintiffs throughout the pendency of this action.

3. The matter was set down for trial which began January 5, 2010 at which time a jury was seated and openings were to occur the morning of January 6, 2010.

4. During the morning of January 6, 2010, extensive settlement discussions and negotiations occurred.

5. A settlement was reached and placed on the record with Plaintiff, Joseph Viscomi and Defendant's representative Jonathan Lawlee verbally accepting and agreeing to the terms and conditions stated before Judge McCurn.

6. The terms of the settlement included Plaintiff authorizing the release of certain funds being held in escrow and Plaintiff executed said release in the presence of a notary on January 6, 2010.

7. That on January 7, 2010, a Judgment Dismissing Action Based Upon Settlement, wherein the action was dismissed, with prejudice, except that the Court is to retain complete jurisdiction to vacate said order and to reopen the action within six months should settlement not be complete and further litigation be necessary. Said Judgment was executed by Senior U.S. District Judge, Neal P. McCurn, filed and entered with the Court.

8. Additionally, said settlement required Plaintiff to execute a Confession of Judgment which Plaintiff executed on January 14, 2010 in the presence of a notary.

9. Plaintiff subsequently directed your deponent to undertake certain actions regarding this matter.

10. After several discussions with the client, it has become apparent an irremediable breakdown in the attorney client relationship has developed.

11. I cannot proceed with the course of legal action Mr. Viscomi is instructing me to pursue. Should the Court desire further details, Deponent can provide said information in chambers.

12. Deponent respectfully requests an Order to permit Counsel to withdraw from this case as circumstances have developed in the course of the representation that have caused an irremediable breakdown in the attorney client relationship which prevent undersigned counsel from providing effective counsel.

WHEREFORE, I am hereby requesting that the Court issue an Order granting permission to withdraw as the attorney for the Plaintiffs in the above action as it is felt that I can no longer represent Plaintiff, Joseph Viscomi, in any further litigation regarding his claim.

Dated: February 23, 2010

By: /s/ Charles L. Falgiatano, Esq.
Bar Roll No. 513110
DeFrancisco & Falgiatano Law Firm
Attorneys for Plaintiff
121 East Water Street
Syracuse, New York 13202
(315) 479-9000
charles@defranciscolaw.com

Sworn to before me this
23rd day of February, 2010.



Notary Public

KIM PERRY
Notary Public, State of New York
No. 01PE0096640
Qualified in Onondaga County
Commission Expires July 28, 2011